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AUG 24 2007

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 05-22777-D-7
MELANIE HUGHES,)	
)	
Debtor.)	
_____)	
)	
CLAYEO C. ARNOLD and CLAYEO)	Adv. Pro. No. 05-2225-D
ARNOLD, PROFESSIONAL LAW)	Docket Control No. ARP-4
CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
MELANIE HUGHES,)	
)	
Defendant.)	
_____)	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On May 22, 2007, Clayeo C. Arnold and Clayeo Arnold, Professional Law Corporation, filed a Motion for Partial Summary Judgment, bearing Docket Control No. ARP-4 (the "Motion").¹ For

1. On the same date, Defendant Melanie Hughes filed a Motion for Summary Judgment. The court's decision on that motion was filed on July 10, 2007.

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1 the reasons set forth below, the court will grant the Motion in
2 part.

3 I. INTRODUCTION

4 On March 14, 2005, Defendant Melanie Hughes (the "Debtor")
5 filed a petition for relief under chapter 7 of the Bankruptcy
6 Code. On June 14, 2005, Clayeo C. Arnold and Clayeo Arnold,
7 Professional Law Corporation ("Plaintiffs"), filed a Complaint to
8 Determine Dischargeability of Debts and for Denial of Discharge
9 (the "Complaint"), thereby commencing the above-captioned
10 adversary proceeding. The factual background of this matter and
11 the allegations made in the Complaint are set forth generally in
12 the court's memorandum decision on the Debtor's motion for
13 summary judgment, filed July 10, 2007, and will not be repeated
14 here. As in that decision, references herein to the state court
15 action will be to Rieger v. Arnold, et al., Sacramento County
16 Superior Court Case No. 97AS03390, and "the attorney's fee award"
17 will refer to the state court's award of attorney's fees and
18 costs in favor of the Plaintiffs and against the Debtor.

19 With the Motion, the Plaintiffs filed a number of exhibits,
20 a declaration of Clayeo C. Arnold, and as required by Local
21 Bankruptcy Rule 7056-1(a), a separate statement of undisputed
22 facts.

23 On June 6, 2007, the Debtor filed a memorandum of points and
24 authorities in opposition to the Motion ("Opposition"), together
25 with exhibits, a declaration of Melanie Hughes, a response to the
26 Plaintiffs' statement of undisputed facts, and a statement of
27 undisputed facts in support of the Opposition.

28 / / /

1 On June 13, 2007, the Plaintiffs filed a reply to the
2 Opposition.

3 On June 20, 2007, the Motion came before the court for
4 hearing, counsel appeared and presented oral argument, and the
5 matter was submitted.

6 In the Motion, the Plaintiffs seek an order determining that
7 the attorney's fee award is not dischargeable, pursuant to 11
8 U.S.C. § 523(a)(6), and in addition, an order that any debt
9 resulting from the Plaintiffs' malicious prosecution action
10 presently pending in state court is nondischargeable. The Motion
11 is denominated a motion for partial summary judgment, because it
12 contains no request for relief with respect to the Plaintiffs'
13 third and fourth causes of action.

14 The Plaintiffs rely on the following findings by the trial
15 judge set forth in the attorney's fee award. (References to
16 Rieger are to the Debtor, whose name at the time was Melanie
17 Rieger.)

18 Attorney's fees and costs are claimed by Arnold, [his
19 law] corporation and Artenstein [the law corporation's
20 office manager and another defendant in the Debtor's
21 state court action] pursuant to Government Code section
22 12965 upon a contention that Rieger's claim was
23 frivolous, unreasonable and without foundation. That
24 is the most benign assessment that can be made of
25 Rieger's claim. It was also brought in bad faith and
26 with the claimant's declared objective "to bring Clay
27 down". It was initiated and prosecuted by the claimant
28 with full knowledge that she was the initiator of and
eager participant in, almost all of the sex-oriented
horseplay and other gender focused activity that
occurred in her workplace or in the company of her co-
workers. She knew, from the outset of the litigation,
that there was no reasonable basis upon which a claim
could be made that she was offended by any of that
activity. Her claim was so patently groundless from
the outset that it has been obvious throughout the
litigation that her motivation was a malicious desire
to harm Arnold. Arnold, corporation and Artenstein are

1 entitled to attorney's fees and costs pursuant to
2 Government Code section 12965.

3 Order Disposing of Motions Related to Costs and Attorney's Fees,
4 Plaintiffs' Exhibits filed May 22, 2007, Ex. J, 2-3.

5 The gist of the Plaintiffs' argument is that the doctrine of
6 collateral estoppel, now known as issue preclusion, applies to
7 make the state court's findings, quoted above, binding on this
8 court in this adversary proceeding, and that as a result of those
9 findings, this court must find the attorney's fee award to be
10 nondischargeable, pursuant to 11 U.S.C. § 523(a)(6).

11 The Debtor responds that the state court's findings do not
12 meet the requirements for application of issue preclusion. The
13 Debtor's several arguments will be explored below.

14 II. ANALYSIS

15 This court has jurisdiction over the Motion pursuant to 28
16 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
17 under 28 U.S.C. § 157(b)(2)(I). The Motion was brought pursuant
18 to Federal Rule of Bankruptcy Procedure 7056, which makes
19 applicable Federal Rule of Civil Procedure 56.

20 A. Standards for Summary Judgment

21 Where a motion for summary judgment is before the court, the
22 court is to render judgment for the moving party where "the
23 pleadings, depositions, answers to interrogatories, and
24 admissions on file, together with the affidavits, if any, show
25 that there is no genuine issue of material fact and that the
26 moving party is entitled to a judgment as a matter of law." Fed.
27 R. Civ. P. 56[©]. The moving party bears the burden of producing
28 evidence showing that there is no genuine issue of material fact

1 and that it is entitled to judgment as a matter of law. Celotex
2 v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986).

3 Once the moving party has met its initial burden, the non-
4 moving party must show specific facts showing the existence of
5 genuine issues of fact for trial. Anderson v. Liberty Lobby,
6 Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514 (1986). Under
7 Rule 56, the court also has authority to make an order specifying
8 those material facts that appear without substantial controversy,
9 and such facts are deemed established for purposes of trial.
10 Fed. R. Civ. P. 56(d).

11 B. Willful and Malicious Injury

12 The Bankruptcy Code excepts from discharge a debt for
13 willful and malicious injury by the debtor to the person or
14 property of another. 11 U.S.C. § 523(a)(6). The "willful" and
15 "malicious" requirements are examined separately. Carrillo v. Su
16 (In re Su), 290 F.3d 1140, 1146 (9th Cir. 2002). The "willful"
17 requirement is satisfied "only when the debtor has a subjective
18 motive to inflict injury or when the debtor believes that injury
19 is substantially certain to result from his own conduct." 290
20 F.3d at 1142. The "malicious" test is met when the act is "(1) a
21 wrongful act, (2) done intentionally, (3) which necessarily
22 causes injury, and (4) is done without just cause or excuse."
23 Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1209 (9th
24 Cir. 2001). "[I]t is the wrongful act that must be committed
25 intentionally rather than the injury itself." Jett v. Sicroff
26 (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005), citing
27 Murray v. Bammer (In re Bammer), 131 F.3d 788, 791 (9th Cir.
28 1997) ("This four-part definition does not require a showing of ...

1 . an intent to injure, but rather it requires only an intentional
2 act which causes injury.").

3 In order to find for the Plaintiffs on this summary judgment
4 motion, the court must be satisfied that both these tests are met
5 by the state court's findings quoted above, and that this court
6 should rely on those findings as preclusive in this proceeding.

7 C. Issue Preclusion

8 The doctrine of issue preclusion applies in dischargeability
9 proceedings under 11 U.S.C. § 523(a). Grogan v. Garner, 498 U.S.
10 279, 284 n. 11, 111 S. Ct. 654 (1991). Simply stated, "[i]f a
11 state court would give preclusive effect to a judgment rendered
12 by courts of that state, then the Full Faith and Credit Statute
13 (28 U.S.C. § 1738) imports the same consequence to an action in
14 federal court based on the same award." Khaligh v. Hadaegh (In
15 re Khaligh), 338 B.R. 817, 824 (9th Cir. BAP 2006), citing
16 McDonald v. City of W. Branch, 466 U.S. 284, 287, 104 S. Ct.
17 1799, (1984); Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245
18 (9th Cir. 2001).

19 In other words, in considering whether to give preclusive
20 effect to a state court's judgment, the bankruptcy court looks to
21 that state's law of issue preclusion. Diamond v. Kolcum (In re
22 Diamond), 285 F.3d 822, 826 (9th Cir. 2002), citing Gayden v.
23 Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995).

24 Under California law, the elements of the doctrine are these:

25 First, the issue sought to be precluded from
26 relitigation must be identical to that decided in a
27 former proceeding. Second, this issue must have been
28 actually litigated in the former proceeding. Third, it
must have been necessarily decided in the former
proceeding. Fourth, the decision in the former
proceeding must be final and on the merits. Finally,

1 the party against whom preclusion is sought must be the
2 same as, or in privity with, the party in the former
proceeding. . . .

3 Even assuming all the threshold requirements are
4 satisfied, however, our analysis is not at an end. We
5 have repeatedly looked to the public policies
6 underlying the doctrine before concluding that
7 collateral estoppel should be applied in a particular
8 setting. . . . Accordingly, the public policies
9 underlying collateral estoppel - preservation of the
integrity of the judicial system, promotion of judicial
economy, and protection of litigants from harassment by
vexatious litigation - strongly influence whether its
application in a particular circumstance would be fair
to the parties and constitutes sound judicial policy.

10 Lucido v. Superior Ct., 51 Cal. 3d 335, 341-43 (1990).

11 D. Summary Judgment as to the Attorney's Fee Award

12 The Plaintiffs rely principally on Nolan v. Smith (In re
13 Smith), 321 B.R. 542 (Bankr. D. Colo. 2005). In Nolan, the state
14 court had awarded the plaintiffs their attorney's fees and costs
15 under a Colorado statute similar to California Government Code
16 section 12965(b). The debtors argued, as does the Debtor here,
17 that the state court made no findings of an intentional, willful
18 and malicious act, as required by 11 U.S.C. § 523(a)(6). The
19 bankruptcy court disagreed, concluding instead that the state
20 court's findings "adequately demonstrate that the Smiths'
21 underlying conduct and their conduct in defending the State Court
22 action was meritless, intentional and willful." 321 B.R. at 548
23 n.9.

24 The Debtor argues that Smith is distinguishable from this
25 case. First, in Smith, the state court made findings that the
26 debtors' conduct giving rise to the state court action was
27 "intentional, willful, concerted and, in the end, indefensible"
28 (see 321 B.R. at 549). Second, the Smith debtors admitted in the

1 bankruptcy court that such conduct constituted a willful and
2 malicious injury. See 321 B.R. at 547. By contrast, the Debtor
3 in this case vehemently denies that any of her conduct, either
4 giving rise to or during the pendency of the state court action,
5 was willful or malicious. And the state court made no findings
6 that her conduct giving rise to the state court action was
7 willful and malicious. Thus, Smith is not on point.

8 However, here, the state court did find that the Debtor's
9 conduct in filing and prosecuting the state court action was "in
10 bad faith and with the [Debtor's] declared objective 'to bring
11 Clay [Arnold] down,'" and that she knew from the outset that
12 "there was no reasonable basis" for her claim. "Her claim was so
13 patently groundless from the outset that it has been obvious
14 throughout the litigation that her motivation was a malicious
15 desire to harm Arnold."

16 The question is whether this court should apply the doctrine
17 of issue preclusion to these findings. The Debtor argues against
18 issue preclusion, contending that (1) the issue of willful and
19 malicious conduct on her part was not actually litigated in the
20 state court, (2) the court's findings were dicta, did not amount
21 to express findings, and are not determinative for purposes of 11
22 U.S.C. § 523(a)(6), and (3) the Debtor's conduct could not have
23 been willful and malicious because her causes of action survived
24 a motion for nonsuit, and indeed resulted in a \$15,000 jury
25 verdict in her favor, because the jury made a specific finding
26 that she had not acted with malice or oppression, and because the
27 California Department of Fair Employment and Housing "authorized"
28 her action.

1 On the first point, the Debtor observes that the Plaintiffs'
2 state court complaint against her (which was consolidated with
3 her action against the Plaintiffs for purposes of trial)
4 originally contained causes of action for wrongful intentional
5 conduct, but all those causes of action were dismissed prior to
6 trial. The only causes of action of the Plaintiffs remaining at
7 the time of trial were for trespass to chattels and breach of
8 contract. Thus, the Debtor concludes, "there was no remaining
9 claim for willful or malicious conduct [by] the Debtor."
10 Opposition at 8.

11 This argument is a red herring. It does not matter that the
12 Plaintiffs' causes of action against the Debtor for intentional
13 torts were dismissed, because the conduct giving rise to the
14 attorney's fee award was the Debtor's conduct in filing and
15 prosecuting her own causes of action against the Plaintiffs.

16 The Debtor's argument that the jury specifically found she
17 had not acted with malice or oppression is similarly misplaced.
18 The jury's finding in that regard was in connection with the
19 Debtor's conduct in interfering with the Plaintiffs' computer
20 database (the trespass to chattels cause of action). Verdict,
21 Debtor's Exhibits filed May 22, 2007, Ex. D, 7-8. It had nothing
22 to do with the state court's findings, quoted above, which
23 pertain to her conduct in prosecuting her own causes of action.

24 This is the crux of the Debtor's argument--that "there is no
25 underlying tort to which the [attorney's fee] award may attach
26 and become nondischargeable." Opposition at 8:8-10. The
27 argument fails because, as this court concluded in its decision
28 on the Debtor's motion for summary judgment, Docket Control No.

1 HSM-2, the attorney's fee award was a direct result of the
2 Debtor's conduct in filing and prosecuting her sexual harassment
3 causes of action against the Plaintiffs. The award was not
4 "ancillary" to any other state court award; instead, it was in
5 the nature of a primary debt, resulting directly from the
6 Debtor's decision to file and prosecute her sexual harassment
7 claims. If that conduct was willful and malicious, within the
8 meaning of 11 U.S.C. § 523(a)(6), the award will be
9 nondischargeable.

10 The Debtor next contends that the language in the attorney's
11 fee order went beyond the findings necessary to justify the
12 award, and therefore, constituted non-binding dicta. According
13 to the Debtor, the state court need only have found that her
14 conduct in prosecuting the sexual harassment claims was
15 frivolous, unreasonable, or without merit. Debtor's Memorandum
16 of Points and Authorities in Support of Motion for Summary
17 Judgment, filed May 22, 2007, at 8:16-18. Thus, the court's
18 remarks about the Debtor's intention "to bring Clay down," and
19 her "malicious desire to harm Arnold" were nothing more than
20 unnecessary observations.

21 In Muegler v. Bening, 413 F.3d 980 (9th Cir. 2005), the
22 court rejected a debtor's argument that a state court jury
23 verdict should not be given issue preclusive effect because
24 applicable state law permitted a finding based upon a lower
25 standard than that required by section 523(a)(6). The court
26 acknowledged that state law allowed a lower standard, but looked
27 to the actual findings, and concluded that issue preclusion
28 applied. 413 F.3d at 984.

1 Although Missouri law allows a jury to find guilt based
2 upon a lower standard than that required by §
3 523(a)(6), in this case the Missouri jury instructions
4 regarding culpability clearly required a finding that
5 [the debtor] intended his misrepresentations to harm
6 the Creditors. The jury found that [the debtor]
7 willfully committed fraud, and awarded compensatory
8 damages to the Creditors based upon its finding.

9 Id.

10 This court reaches a similar conclusion. In order to award
11 fees to a prevailing defendant under Government Code section
12 12965(b), a court must make findings that the Debtor's conduct in
13 prosecuting the action was unreasonable, frivolous, meritless, or
14 vexatious. Cummings v. Benco Building Services, 11 Cal. App. 4th
15 1383, 1387 (1992), citing Christiansburg Garment Co. v. EEOC, 434
16 U.S. 412, 421, 98 S. Ct. 694 (1978). The court need not find
17 that the action was brought in bad faith. Cummings, 11 Cal. App.
18 4th at 1387. However, a section 12965(b) award may be based on a
19 finding of the plaintiff's bad faith. Bond v. Pulsar Video
20 Prods., 50 Cal. App. 4th 918, 924-925 (1996). "[N]eedless to
21 say, if a plaintiff is found to have brought or continued such a
22 claim in bad faith, there will be an even stronger basis for
23 charging him with the attorney's fees incurred by the defense."
24 Bond, 50 Cal. App. 4th at 925, quoting Christiansburg Garment
25 Co., 434 U.S. at 422 (emphasis added).

26 In Saret-Cook v. Gilbert, Kelly, Crowley & Jennett, 74 Cal.
27 App. 4th 1211 (1999), the appellate court examined findings
28 similar to those made in this case; namely, that the plaintiff's
"actions and tactics in filing and prosecuting this lawsuit were
done with subjective bad faith," and that "Plaintiff's motive in
filing and prosecuting this lawsuit was to harass Defendants . .
. ." 74 Cal. App. 4th at 1229. In affirming the fee award, the

1 appellate court concluded that these findings "amounted to much
2 more than only a finding that [the plaintiff's] action lacked
3 merit. Fairly read, [they] also constituted a finding that [the
4 plaintiff's] action was 'unreasonable,' was 'frivolous,' and was
5 'vexatious.'" Id. at 1229-30.

6 Similarly, in this case, the state court's findings
7 concerning the Debtor's motivation in bringing and pursuing her
8 action constitute findings that her actions were unreasonable,
9 frivolous, and vexatious. They also constitute a finding that
10 her conduct was in bad faith. Without those findings, the order
11 could not stand, and indeed, would not have withstood the
12 Debtor's appeal. This court will not engage in a parsing of the
13 critical paragraph in the order, selecting as essential to the
14 award only those words and phrases that support a more benign
15 "unreasonable" finding, and omitting as dicta those that support
16 a finding of bad faith. Instead, the court concludes that the
17 state court's findings, as quoted above, were necessary to its
18 award of fees and costs.

19 The Debtor makes several other arguments. First, as support
20 for her conclusion that her prosecution of the state court action
21 could not have been willful and malicious, the Debtor notes that
22 (1) her sexual harassment, wrongful termination, and assault and
23 battery causes of action survived a motion for nonsuit in the
24 state court, (2) the jury rendered a verdict in her favor for
25 \$15,000, and (3) she did not file her complaint until she had
26 received "the appropriate authorization letters from the
27 California Department of Fair Employment and Housing."
28 Opposition at 5:22-26.

1 The courts have rejected a bright-line rule that a plaintiff
2 whose claims survive a motion for summary judgment or motion for
3 nonsuit cannot be liable for fees under section 12965(b).

4 Rosenman v. Christensen, 91 Cal. App. 4th 859, 866 (2001); Bond
5 v. Pulsar Video Prods., supra, 50 Cal. App. 4th at 923.

6 Such a rule would unjustifiably shield those plaintiffs
7 who are able to raise a triable issue of fact, even
8 though it be by means of fabricated evidence and false
9 testimony. If the false and unfounded nature of such a
plaintiff's claims is revealed at trial, the prevailing
defendant should be able to recoup its attorney fees to
the extent the plaintiff is able to pay.

10 Rosenman, supra, 91 Cal. App. 4th at 866.

11 "Declarations sufficient to create a triable issue in a
12 summary judgment proceeding may, in the crucible of a trial, be
13 revealed to be spurious and the litigant's claim frivolous,
14 unreasonable and without foundation." Bond, supra, 50 Cal. App.
15 4th at 923. Similarly, the Debtor's claims may well have been
16 pursued with the willful and malicious intent to cause injury to
17 the Plaintiffs, despite the fact that those claims survived a
18 motion for nonsuit.

19 The court reaches the same conclusion with respect to the
20 jury's \$15,000 verdict in favor of the Debtor. The jury found
21 for the Debtor on her claim that the law corporation failed to
22 take steps to protect her from hostile environment harassment.
23 However, it also found against the Debtor on her claim for
24 hostile environment harassment itself. Verdict, Debtor's
25 Exhibits filed May 22, 2007, Ex. D, 1, 3. The state court held
26 as follows: "Since there exists no independent cause of action
27 for failure to protect against hostile environment harassment,
28 the findings favoring the plaintiff [the Debtor herein] upon

1 that claim cannot be supported and a judgment favoring the
2 defendants, notwithstanding the verdict, is required." Order
3 for Judgment Notwithstanding the Verdict, Plaintiffs' Exhibits
4 filed May 22, 2007, Ex. C.

5 Finally, the "right-to-sue" notice issued by the Department
6 of Fair Employment and Housing pursuant to Government Code
7 section 12965(b) is a prerequisite to the filing of a civil
8 action such as the Debtor's. The issuance of the notice
9 reflects the Department's decision not to issue its own
10 accusation against the employer, at least not within the first
11 150 days from the filing of the complaint with the Department,
12 and is in no way an endorsement of the Debtor's action.

13 Each of these arguments either was or could have been
14 raised in the Debtor's appeal from the state court judgment and
15 attorney's fee order. The appellate court affirmed both in a
16 ruling that is now final; its analysis of the Debtor's arguments
17 regarding the fee order appears at pages 29-33 of the ruling.
18 Decision of the Third District Court of Appeals in Rieger v.
19 Arnold, et al., Case Nos. C034625, C035383, Debtor's Exhibits
20 filed June 6, 2007, Ex. 14. Under the doctrine of issue
21 preclusion, the Debtor is precluded from raising these issues
22 yet again in this court. The Debtor's references in her
23 Opposition to certain evidence admitted at trial after her
24 motions in limine were denied, and her references to the trial
25 court's and appellate court's findings concerning the working
26 environment at the law corporation's office, all having been
27 addressed by both state courts, are also subject to issue
28 preclusion in this proceeding.

1 The court notes that under both federal and California law,
2 the decision to apply issue preclusion to findings of another
3 court is discretionary. See Lopez v. Emergency Serv.
4 Restoration, Inc. (In re Lopez), 2007 Bankr. LEXIS 1250, at *16-
5 *19 (9th Cir. BAP 2007). In particular, in evaluating a
6 California order, the court is to consider "whether imposition
7 of issue preclusion in the particular setting would be fair and
8 consistent with sound public policy." In re Khaligh, supra, 338
9 B.R. at 824-25, citing Lucido, supra, 51 Cal. 3d at 341-43.

10 The court has considered various possible countervailing
11 factors, as suggested in the case law (see Lopez, supra, 2007
12 Bankr. LEXIS 1250, at *16-*19), and in the Restatement (Second)
13 of Judgments §§ 28(2), (3) & (5), and concludes that applying
14 issue preclusion to the attorney's fee award does not offend
15 notions of fairness or sound public policy. The Debtor has
16 pointed out that the Plaintiffs, in their motion for an award of
17 fees and costs, argued that the Debtor's conduct was
18 unreasonable, frivolous, and without merit; they did not
19 specifically request a finding that such conduct was malicious
20 or in bad faith. See Memorandum of Points and Authorities in
21 Support of Defendants' Joint Motion for Attorneys' Fees and
22 Costs, Plaintiffs' Exhibits filed May 22, 2007, Ex. E. This
23 argument is not persuasive. The issue of a responding party's
24 good faith or lack thereof is squarely in play when a court
25 addresses a motion for an award of fees under Government Code
26 section 12965(b); a court's finding that the respondent's
27 conduct was not in good faith merely underscores the
28 appropriateness of the resulting award. Here, the issue of the

1 Debtor's good or bad faith was in play, and the state court's
2 findings were a necessary component of its determination of bad
3 faith.

4 Further, the Debtor appealed from the order, and had a full
5 and fair opportunity to challenge the findings that are at issue
6 here. Issue preclusion "bars relitigation of an issue
7 previously decided if the party against whom the prior decision
8 is asserted had 'a full and fair opportunity to litigate that
9 issue in the earlier case.'" Albarran v. New Form, Inc. (In re
10 Albarran), 347 B.R. 369, 385 n. 15 (9th Cir. BAP 2006), quoting
11 Allen v. McCurry, 449 U.S. 90, 94-95, 101 S. Ct. 411 (1980).

12 In sum, the court finds that the six tests for issue
13 preclusive effect of California judgments--(1) identical issue,
14 (2) actually litigated, (3) necessarily decided, (4) in a
15 decision final and on the merits, (5) between the same parties,
16 and (6) application of the doctrine fair and consistent with
17 sound public policy--are met in this case with respect to the
18 attorney's fee order.

19 E. Summary Judgment as to the Malicious Prosecution Action

20 In a action commenced October 17, 2003 in the Sacramento
21 County Superior Court, Case No. 03AS05820, the Plaintiffs seek
22 damages for malicious prosecution against the Debtor and the
23 attorneys who represented her in the state court action. The
24 complaint appears in the Plaintiffs' Exhibits filed May 22,
25 2007, Ex. L. The damages sought include the attorney's fees and
26 costs the Plaintiffs incurred in defending against the Debtor's
27 claims, damages for lost earnings, damages for injury to their

28 / / /

1 reputations, social standing, and character, damages for
2 emotional distress, and punitive damages.

3 In the Motion, the Plaintiffs seek "an order determining
4 that any debt resulting from the malicious prosecution
5 litigation" is nondischargeable. Motion at 9. No such relief
6 was prayed for in Plaintiffs' complaint; indeed, the malicious
7 prosecution action was not even mentioned. For this reason, the
8 court will deny the Plaintiffs' request for an order determining
9 that any debt resulting from that action is nondischargeable.

10 III. CONCLUSION

11 For the foregoing reasons, the court concludes that the
12 findings of the state court supporting the attorney's fee award
13 are entitled to preclusive effect in this proceeding, that such
14 findings support a conclusion that the attorney's fee award is
15 nondischargeable under 11 U.S.C. § 523(a)(6), and that as a
16 result, there is no genuine issue of material fact remaining to
17 be decided at trial.

18 For the reasons set forth above, the court will issue an
19 order granting the Motion as to the attorney's fee award and
20 denying the motion as to any other debts that may arise out of
21 the malicious prosecution action.

22
23 Dated: August 24, 2007



ROBERT S. BARDWIL

United States Bankruptcy Judge

Certificate of Service

I certify that on AUG 23 2007 a copy of the foregoing document was mailed to the following:

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FOR THE COURT
RICHARD G. HELTZEL
CLERK, U.S. BANKRUPTCY COURT

By: 
Deputy Clerk